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99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-631

H.R. 3526 ORIGINAL

PROVIDING FOR THE SETTLEMENT OF CERTAIN CLAIMS RESPECTING THE SAN CARLOS APACHE TRIBE OF ARIZONA

JUNE 11, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

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REPORT

[To accompany H.R. 3526]

The Committee on Interior and Insular Affairs, to which was referred the bill (H.R. 3526) to provide for the settlement of certain claims respecting the San Carlos Apache Tribe of Arizona, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 3526 is to implement an agreement between the United States and the San Carlos Apache Tribe of Arizona concerning the settlement of some tax liabilities owed the United States by the Tribe.

BACKGROUND

For various reasons, including poor financial management, the San Carlos Apache Tribe of Arizona did not pay to the Internal Revenue Service (IRS) unemployment insurance taxes and Social Security contributions withheld from the wages of tribal employees. The Tribe and the IRS negotiated an agreement on May 15, 1985, whereby the Tribe would pay back taxes and contributions owed (approximately $800,000) and seek legislation to forgive the interest due on the initial tax liability since the IRS does not have this authority. The IRS agreed not to assess a penalty if the back payments were paid in full and legislation was enacted by the Congress to forgive the interest due. The Tribe has paid back the amount initially due the IRS and this legislation would implement the rest of the May 15, 1985 agreement between the Tribe and the IRS. The agreement

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calls for the abatement of any interest due by the tribe to the IRS as a result of the original liability and also calls for the IRS to abate any penalty due as a result of such non-payment of taxes.

Following is the text of the agreement between the IRS and the San Carlos Apache Tribe.

AGREEMENT FOR THE INSTALLMENT PAYMENT OF TAX AND INTEREST AND THE ABATEMENT OF PENALTIES

By this agreement entered into between the San Carlos Apache Tribe EIN 86-0093307 (the Tribe) and the Internal Revenue Service (through its District Director for the Phoenix District (the IRS) to resolve the unpaid liability of the Tribe for tax, penalties and interest as specified in Exhibit A to this agreement, which reflects the true and accurate liability for the period involved, the parties agree as follows:

1. Within fourteen (14) days from the date of this agreement (which date is the date of execution of the agreement by the Internal Revenue Service), the Tribe will pay the unpaid tax liability owed by the Tribe in the amount of $827,260.71.

2. (a) Although interest will continue to accrue, the IRS will withhold collection of interest for the tax periods herein involved for a period of six (6) months from the date of this agreement to allow the introduction of legislation in the United States Congress to resolve the payment of this interest by the Tribe.

(b) Should legislation as specified in subparagraph 2(a) be timley introduced, collection of interest for the tax periods herein involved will further be withheld for an additional period of time until the adjournment sine die of the 99th Congress currently in session to allow passage of the legislation which shall include such time as allowed by law for Presidential approval or veto.

(c) To insure payment of the interest should Congress fail to enact legislation as specified in subparagraphs 2 (a) and (b), the Tribe has passed the Tribal Resolution attached hereto as Exhibit B.

(d) All statutes of limitation applicable to the periods covered by this agreement are suspended from the date of this agreement as provided in paragraph 1. until sixty (60) days after the date upon which the Service is no longer required by this agreement to withhold the collection of interest.

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3. (a) The IRS will immediately withhold collection of the penalties for the periods here involved and upon the payment of the full tax liability of $827,260.71, will abate such penalties along with the interest thereon. To accomplish this the Phoenix District will prepare the required documents to cause the penalties to be abated within fourteen (14) days from the date of payment of full tax liability. These documents will be forwarded to the Ogden Service Center with directions that they be processed as expeditiously as possible and it is expected that in all probability the tribe will receive notification that the abatement has been completed within 120 days thereafter.

(b) A portion of the interest shown in Exhibit A applies to interest on the penalties and when the penalties are abated all interest arising from the penalties will also be abated.

4. It is the desire of the Tribe to remain current on all present and future tax liabilities. To insure such compliance, the Tribe will follow the following procedure in addition to the general filing and payment requirements of the Internal Revenue Service. This paragraph is independent of and shall not have any effect on the other provisions of this agreement.

(a) Beginning upon the execution of this agreement and continuing until the adjournment of the 99th Congress as specified in subparagraph 2(b), the Tribe will file monthly Forms 941M, accompanied by payment in full for the taxes normally required to be reported quarterly. The Forms 941M will be filed by the fifteenth (15th) day of the month following the month covered by the return and will be delivered to the Internal Revenue Service, 40 West Baseline Road, Suite 211, Tempe, Arizona 85283, Attn: 1601

(b) Beginning immediately and continuing until the adjournment of the 99th Congress as specified in subparagraph 2(b), the Tribe will meet all deposit requirements of the Internal Revenue Code in connection with Form 940 returns by timely delivering said deposits to the IRS at the address stated in subparagraph (a) above. Forms 940 paid in full will also be timely filed at that address.

(c) It is understood that if the Tribe does not comply with subparagraphs (a) and (b) above, the Service may impose any other requirements upon the Tribe allowable by law.

(d) It is further understood that the Tribe is now aware of the importance of strictly complying with the Internal Revenue laws and any penalties which have arisen or will arise for the periods subsequent to those covered by this agreement for the Tribe's noncompliance with those laws will be due and payable pursuant to law.

(e) Nothing in this agreement in any manner restricts or prohibits the IRS from following any permissible collection procedure allowable by law once this agreement expires.

5. Time is of the essence as to all terms of this agreement.

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6. The waiver of any of the provisions of this agreement, either express or implied, shall not be construed to be a waiver of any other provision of the agreement, and the party which had granted the waiver may terminate it at any time and demand immediate compliance with the provision so waived.

7. This agreement shall be binding on the parties as well as their successors, agents and assigns.

SAN CARLOS APACHE TRIBE, a federally-recognized Indian Tribe organized pursuant to section 16 of the Indian Reorganization Act of 1934

Dated: May 15, 1985.

NED ANDERSON, SR.,
Chairman, San Carlos Apache Tribe.

RONALD J. BOYER,
Revenue Officer, Internal Revenue Service,
Phoenix, Arizona.

SECTION-BY-SECTION ANALYSIS

Section 1

This section contains the Congressional findings that the San Carlos Apache Tribe has entered into an agreement on May 15, 1985 to provide for the settlement of a dispute over certain tax liabilities the tribe owes the United States. Pursuant to this agreement, the tribe paid in a timely manner, the tax liability and the United States agreed to abate the penalties and interest arising out of this liability.

Section 2

This section provides that all interest arising from the tax liability which the San Carlos Apache Tribe paid on May 16, 1985, is hereby abated. The section also provides that the tribe is released from any claim of the United States arising from the tax liability that the Tribe paid on May 16, 1985.

COST AND BUDGET ACT COMPLIANCE

No cost analysis was available from the Congressional Budget Office prior to filing this report, but the Committee believes that the costs will be relatively nominal and will have no significant budgetary impact.

INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 3526 will have no inflationary impact.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, clause 2(b)2.

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COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of the bill by the House.

DEPARTMENTAL REPORT

The report submitted by the Department of the Interior on H.R. 3526 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, May 14, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 3526, a bill "To provide for the settlement of certain claims respecting the San Carlos Apache Tribe of Arizona."

We recommend enactment of H.R. 3526 by the Congress.

For several years the San Carlos Apache Tribe (Tribe) of Arizona did not pay to the Internal Revenue Service (IRS) unemployment insurance taxes and social security contributions withheld from the wages of tribal employees. It is our understanding that the Tribe's failure to pay the taxes and contributions when owed resulted from poor financial management, which the Tribe has taken steps to correct, rather than from an intentional disregard of its tax obligations. After this matter was brought to their attention, the Tribe requested the IRS to assist them in determining the amount of back taxes and contributions owed. The Tribe and the IRS subsequently negotiated an agreement on May 15, 1985, whereby the Tribe would pay the back taxes and contributions owed (approximately $500,000 in total) and seek legislation to forgive the interest due since the IRS does not have this authority. The IRS, on its part, agreed not to assess a penalty if the back payments were paid in full and legislation was enacted by the Congress to forgive the interest due.

H.R. 3526 would implement the May 15, 1985, agreement between the Tribe and the IRS. While we do not condone the action of the Tribe in not paying the taxes and contributions when owed, we are pleased that the Tribe and the IRS were able to reach an agreement. We support H.R. 3526 as an appropriate vehicle to implement the May 15 agreement. Our support for this bill does not constitute any precedent for the future.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROSS O. SWIMMER,
Assistant Secretary.

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